



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0170/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Transport Accident Commission</b>
<b>3</b>	<b>Product</b>	<b>Community Awareness</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>23/05/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

- 2.6 - Health and Safety      Motor vehicle related
- 2.6 - Health and Safety      within prevailing Community Standards
- 2.3 - Violence Graphic Depictions

### DESCRIPTION OF THE ADVERTISEMENT

The TVC shows the reconstructed (in reverse) actions of a motorbike crashing into a car. The police expert describes the accident and we see (and hear) that the motorcyclist broke his neck in the accident. The expert then explains what could have happened if the motorcyclist was going slower.

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*The message sent from the ad is that it is ok to kill motorcyclists as they don't do enough to protect them selves regardless of situation.*

*The ad includes factually incorrect information for the purposes of dramatic license. A rider is depicted responding to a life threatening risk in an unlikely way but then in the next scene a scene that has been favourably designed for the TAC's purposes the rider inexplicably behaves in the expected way.*

*The distance available to stop or slow and avoid the hazard was more than ample for any capable rider as several reputable motorcycling references can demonstrate - but the ad depicts this as a fatally short distance.*

*Firstly let me say that I was offended by the graphic nature of the ad where you can clearly hear the rider's neck break; my young children started crying when they saw it.*

*The advert is demonstrating speed kills. But this particular advert is rationalising poor car driving - the car should not have pulled out - the bike barely misses the car even at the speed limit. There is no mention that the car driver is doing anything wrong - so it is validating this kind of driving (car) as good and proper despite the fact had the bike hit the car the car driver would most likely be held culpable as he clearly pulled out without due regard for oncoming traffic.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*Thank you for notifying the Transport Accident Commission (TAC) of the complaints received by the Advertising Standards Bureau in relation to the motorcycles advertising campaign "Reconstruction". We have received two official complaint notifications from you, addressing a number of issues. We will address both of these complaints within this response. Summarised below are the issues raised within the complaints as they apply to Section 2 of the AANA Advertiser Code of Ethics:*

- *2.6 Health and safety motor vehicle related*
- *2.6 Health and safety within prevailing community standards*
- *2.3 Violence graphic depictions*

*This campaign has been developed with the sole aim of saving Victorian riders' lives and reducing trauma on Victoria's roads.*

*In this response we outline the road safety statistical background to the campaign, the rationale for the creative approach taken and the forensics/physics associated with the development of the crash scenario, as well as the extensive market research conducted. The very confronting nature of this campaign was thoroughly market tested and endorsed by the target audience – male Victorian motorcyclists.*

*Following your review of this material we are confident that you will find the TAC has developed a campaign to tackle the issue of road trauma suffered by motorcyclists in a responsible way that is 'justifiable in the context of the product or service advertised' (i.e. road trauma), as per section 2 of the Advertisers Code of Ethics.*

### *Background*

*Road trauma including death and injuries is a social issue that affects more than individual road users. Families, friends and work colleagues are placed under enormous stress; not to mention the wider impact on Victoria's health and compensation systems. Every year the TAC provides over \$900 million dollars in support services and benefits Victorians injured in road accidents and assisting the families of those who have died.*

*In tackling the issue of road safety, the TAC has segmented its approach, looking at aspects like age, sex, the type of behaviour (speeding, drink driving, fatigue, etc.) and the road user type (driver, rider, pedestrian, etc.).*

*Road trauma causes are well understood and are largely preventable. In 2011 the Victorian road toll was 287; the lowest toll ever recorded. In the same year the TAC accepted claims for people injured in crashes from approximately 16,000 people.*

*Victoria has made significant gains in reducing road trauma over the years through challenging and diverse strategies involving public education, legislation and infrastructure.*

*But, there is still some way to go. This is why targeted and planned public education campaigns, like the one being reviewed, have been and will remain a critical tool in reducing death and injuries on our roads.*

#### *Motorcycle Trauma Statistics*

*Motorcyclists are over represented in Victoria's road trauma. Despite accounting for only 3.8% of registered vehicles and around 1% of kilometres travelled in Victoria, motorcyclists represented 17% of fatalities in 2011 and 17% of acute hospitalised TAC claims in 2010/2011.*

*Last year, 49 motorcyclists were fatally injured on Victorian roads. In approximately 30% of these crashes, excessive or inappropriate speed was a contributing factor, a majority of which were single vehicle accidents involving only the motorcycle rider.*

*The overall cost to the TAC is in the order of 4-6 times higher per crash for vehicle for motorcycle riders than for occupants of passenger vehicles. Motorcyclists account for 20% of all TAC's no fault costs.*

*The numbers of motorcycle hospital admission claims have also increased, as have the number of people hospitalised for more than 14 days claims and catastrophic claims (quad/paraplegia and severe acquired brain injury).*

#### *The Strategy to Save Motorcyclists Lives*

*TAC's own research and that of other road safety experts indicate that a range of road safety strategies can help prevent traumatic outcomes among motorcyclists, including wearing of protective clothing, riding within the speed limit and for the conditions and awareness among other road users of the vulnerability of motorcyclists.*

*The current TAC motorcycle public education program strategy has been in place for a number of years and involves multiple stages of public education addressing a number of these issues.*

*The first phase of the campaign launched in 2009 highlighted the fact that motorcyclists are 38 times more likely to be killed or seriously injured than car occupants (Henley & Harrison, 2009). The campaign communication encouraged riders to be aware of strategies they can undertake to reduce their risk, including usage of protective clothing, reduction of risky riding habits such as lane splitting and travelling at safe and legal speeds, so they are prepared for the unexpected.*

*This initial phase aimed to reinforce to riders that regardless of who is at fault in a road crash, riders will unfortunately come off second best and therefore, it is up to the rider to reduce their level of risk where possible. Creative executions were developed for all mainstream and digital media including TV, outdoor, online, in-game, press and print collateral.*

*In March 2012, before the launch of this current campaign, the TAC also undertook a communication campaign targeting drivers of passenger vehicles, encouraging them to be more aware of riders and make deliberate efforts to look for riders on the road, so as to ensure their safety and help reduce the Victorian road toll. 'Vice Versa' was on air from mid March through to the launch of the latest motorcycles campaign. Media included TV, radio, outdoor, online and press.*

#### *2012 Campaign – Motorcycles Reconstruction - Speed*

##### *The Issue*

*Speeding is a significant contributor to serious road trauma across all road user groups. Vulnerable road users such as motorcyclists are especially at risk of death or serious injury when a crash involves speed. Research shows that small increases in the average travel speed can lead to substantial increases in deaths and serious injuries (Kloeden, McLean, Moore & Ponte, 1997; McLean, Anderson, Farmer & Brooks, 1994). An examination by Victoria Police between May 2002 and April 2003 of a sample of fatal crashes involving*

motorcycles indicated that 38% of riders were exceeding the speed limit prior to the collision (Victoria Police, 2003)..

In addition, surveys conducted with riders by the TAC from 2009 through 2010 show that more than one in four self-report speeding for at least half the time that they ride. More than half of this group report speeding “all or most of the time” (Transport Accident Commission, 2011). Speeding has been shown to be a contributing factor in the majority of metropolitan fatality crashes.

Building on previous public education campaigns, this execution deals with the issue of speed; the risks and potential traumatic outcomes that can be experienced by riders.

The TAC’s vision is to make speeding as socially unacceptable in the Victorian community as it is with drink driving. Significant public education has been undertaken in the Victorian community, especially regarding the issue of low level speeding (Wipe off 5) since 2001, but until now has focussed primarily on car drivers.

The main objective of this campaign is to communicate the importance of adhering to the speed limit to reduce the severity and probability of a crash, highlighting that no matter how skilled or experienced a rider you are, you cannot defeat the laws of physics, particularly amongst this vulnerable road user group.

Whilst issues of protective clothing, road type, vehicle technology and experience also play a role in safety for the rider, riding at a safe travelling speed provides more time to react and a greater ability to respond to the unexpected, delivering a greater chance of avoiding collision and minimising traumatic outcome.

#### Concept Development

In 2006, the TAC launched the first “Reconstruction” campaign addressing the issue of low level speeding, targeting drivers of passenger vehicles as part of the Wipe off 5 strategy. This campaign has proven to be an important part of the low level speed strategy, as research and self-reported behaviour has produced positive decline in average travelling speeds, as well as corresponding reduction in road trauma. This campaign TVC execution can be found at <http://www.youtube.com/watch?v=5Z23CzSONiU&feature=plcp>.

It is also worth noting that the original Reconstruction campaign also witnessed ASB complaints, none of which were upheld.

The communications approach undertaken for this campaign is to replicate the “physics lesson” in order to explain the issue of speeding and the physics of reaction times, impact speed and injury outcome to the Victorian riding community, as they apply to motorcycle riders. Building on this previous Reconstruction campaign, the TAC again sought the assistance of the Victoria Police Major Collision Investigation Unit (“MCIU”) and specifically Det. Sgt Peter Bellion. The role of the MCIU is to investigate all fatal road collision on Victoria’s roads to ascertain the cause of the collision, fault and other critical data that forms part of the legal, judicial and compensation schemes in Victoria.

Det. Sgt. Bellion is one of the most senior investigators at MCIU, with over 20 years of crash investigation experience and having attended in excess of 2,000 crashes. He is one of three reconstruction experts in Victoria who uses engineering and science skills to analyse the evidence that is collected at major collisions around Victoria and provides expert opinion on potential crash causes.

As the next chapter in this approach, this new campaign reconstructs a collision between a motorcyclist and a car and investigates how a small change in speed can positively affect the injury outcome for the motorcyclist; just 8km/h can be the difference to whether the rider is injured or killed.

The collision scenario

*To avoid misinterpretation by motorcyclists and critical to ensure the campaign's validity, the specific road collision depicted in this campaign is based on fact and reflective of what does happen on Victoria's roads.*

*An analysis of crashes involving motorcycles in Victoria from 2007 to 2011 showed that more than one in five of motorcycle crashes involved a multi-vehicle crash with one of the vehicles turning.*

*In 80% of fatal crashes the turning vehicle was the car (or truck) with the motorcycle travelling through. The configuration of the crash depicted in the commercial represents a typical crash type occurring on Victoria's roads and was developed in consultant with Det. Sgt. Peter Bellion of Victoria Police, the Major Collision Investigation Unit.*

*The factor of blame*

*The advertisement demonstrates that the car driver does not fail to stop, nor does the car driver fail to give way. The car driver is stationary at the stop sign, indicating right and looking for oncoming traffic. The driver then turns right after looking.*

*The car driver is unable to see the oncoming motorcyclist, which is travelling at speed (68km/h) and therefore out of the field of vision of the car driver. The driver takes all required steps to look for other road users before proceeding to turn.*

*This specific scenario was advised by Victoria Police on the basis that it is a physical recreation of a factual crash scenario, speed is the major contributing factor to the collision and that the driver's behaviour was legal.*

*More information detailing this scenario and to address consumer concern is available at [www.spokes.com.au](http://www.spokes.com.au) and has been since the launch of the campaign on April 26, but specifically regarding the case law cited, the Motor and Traffic Law Victoria 2010 pages 787-791 deals with this matter in depth and discusses Stopping and Giving Way in Regards to Road Safety Road Rules 2009, Regulation 67 (Stopping and giving way at a stop sign or stop line at an intersection without traffic lights) Regulation 68 (Stopping and giving way at a stop sign or stop line at other places) and Regulation 69 (Giving way at a give way sign or give way line at an intersection). It is within these pages that relevant Case Law decisions are discussed as well as definitions provided. On page 790 in the definition of "give way" at paragraph 3 in reference to Cases, Moulton v Williams; Moulton v Baxter (1969) VR 524 states, "Furthermore, if the driver on the left has otherwise complied with the former provision and first becomes aware of the imminent danger of a collision at a time when it is no longer possible to give way to the vehicle on the right, that former provision had no application. The driver, in this situation, is not in breach whether the driver remained stationary, accelerated to avoid the other vehicle or took other evasive action."*

*In extreme speeding circumstances where a vehicle travelling along the main carriageway at high speed has crashed into a turning vehicle and killed an occupant of either vehicle, there have been successful criminal prosecutions for offences such as Culpable Driving Causing Death or Dangerous Driving Causing Death.*

*The type of Motorcycle*

*In order to make this communication as real and factual as possible, so as to minimise misinterpretation, it was crucial to choose a motorcycle that was representative of those that currently populate Victoria's roads. The motorcycle also needed to be readily commercially available and affordable.*

*The choice of motorcycle was based on a survey of the most common types of commuter bikes in Melbourne (Rose, Thompson, Amani & McClure, 2012). The results of the survey indicated that sports bikes were the most common commuter bikes in Melbourne (Rose, Thompson, Amani & McClure, 2012). Selection of the sports bike was then based on sales data from the Federal Chamber of Automotive Industries (FCAI) on the top 10 selling sports bikes in 2011. The bike used was a 2008 Yamaha YZF R1, which was the fourth best selling*

sports bike in 2011. It is important to note that anti-lock brakes (ABS) and a linked braking system from front to rear were not available on this vehicle. Whilst there are significant road safety benefits associated with ABS, it was important to depict a motorcycle without the technology as this is more representative of the majority of motorcycles on Victorian roads. It is also worth noting, and as an adjunct to this specific campaign strategy, the TAC works closely with stakeholders to promote the road safety benefits of ABS. Activities undertaken include promotion of the technology at the MotoGP, provision of information on the TAC's [spokes.com.au](http://spokes.com.au) website regarding the safety benefits of ABS and its availability and an event to demonstrate to industry and stakeholders how ABS works and its benefits and a live demonstration of the technology.

The rider is also depicted wearing a complete set of protective riding gear reflective of what is typically commercially available in Victoria.

#### *The Physics*

The recreation physics in the crash scenario is based on best practice and what is currently used by Victorian road safety experts, including Victoria Police, VicRoads and the TAC. As previously mentioned, the TAC worked with Victoria Police's MCIU to develop the scenario and relevant calculations for the advertisement. The detail below outlines the scenario depicted and the relevant calculations.

In the scenario depicted in the ad, the distance from when the rider first saw the car to the point of impact is 49m. For a rider travelling at 68km/h and using a perception reaction time (PRT) of 1.5secs (85 percentile emergency braking perception and reaction time for alert & non affected person), the total distance covered by the rider before he starts to brake is 28.34m, leaving 20.66 metres in which to brake.

Inputting 20.66 m for "d" in physics linear motion equation above, the end velocity or impact velocity is 8.54 metres per second = 30.74 km/h

The 30km/h impact dynamics and trajectories for the advertisement were modelled using a multi-body rider and motorcycle colliding into the turning car using the PC Crash Program for Simulation of Road Accidents. PC Crash is the most widely used world-wide simulation program for road accident analysis to meet the needs of the administration of justice. Exert evidence utilising the program as a tool has been accepted and allowed to be presented in the County Court of Victoria in Criminal Trials of a Culpable Driving nature, Case Reference R v Adianto.

The throw distance of the rider for the 30km/h impact was modelled off information presented in the Society of Automotive Engineers Publication SAE PT-35, "Accident Reconstruction Technologies: Pedestrians & Motorcycles in Automotive Collisions." Edited by SH Baackaitis and specifically in the Section on Collision Dynamics and Rider Kinematics. Within this section of the text is Society of Automotive Engineers Paper 831622, "The Trajectories of Pedestrians, Motorcycles, Motorcyclists, etc. Following a Road Accident" by John A. Searle and Angela Searle.

The rider in the ad in the 68km/h scenario did apply both front and rear brakes. He locked up the back wheel resulting in a straight line skid, which is a common scenario observed in major collision investigations for this type of crash and has also been observed in motorcycle emergency braking experiments where the deceleration rate for that situation has been measured at between 0.7g to 0.8g.

#### *Research*

TAC recognises that motorcyclists are extremely vulnerable road users. Likewise we understand riders are also a unique target market in terms of not only their mindset, but also the unique challenges they face on the road in terms of risk level and often poor perception by other road users.

*The TAC ensured every phase of the development, production and research was undertaken to ensure a true, factual, realistic and ethical advertisement was put to air – after all, the key aim is to reduce Victorian rider fatalities.*

*Research undertaken:*

- A statistical review of fatalities, injuries and collisions, sourced from TAC data, but also data from Victoria Police.*
- Other motorcyclist road safety focussed studies from around the world in context of the development of the motorcycle public education strategy.*
- The TAC undertakes a Motorcycle Behavioural Tracking study on a fortnightly basis to assess rider attitudes and behaviours to specific road safety issues, as well as to measure recall of motorcycle campaigns and understand the effectiveness and opinions of the TAC campaigns across all riders.*
- Concept research was undertaken among riders to investigate the message takeout, likely behaviour change and validity of a range of concepts developed to meet the brief. If a specific concept is successful it will proceed to the production phase. If not, then further concept development is undertaken (and learnings from research applied) and concept research is repeated.*
- Offline research is undertaken once the commercial has been filmed and an initial edit is available. This is crucial to ensure that all feedback at concept research stage has been applied and also provides the opportunity to fine-tune the execution, so as to maximise the road safety message takeout and minimise any potential negative issues. Two rounds of offline research was undertaken for this campaign, talking directly to riders. Positive results were achieved in terms of message takeout.*

*Media*

*The primary target audience is male motorcyclists aged 18-40 years. We also aimed to speak to all Victorian riders male and female, as well as their families as we know from research that they can often influence rider behaviour.*

*The CAD approval reference provided by Commercials Advice Pty Ltd for the 60sec hero TVC is PVUIXGOA and was rated PG.*

*Media channels selected to effectively communicate this critical road safety message included metropolitan and regional television, metropolitan radio, regional press and selected motorcycle magazines, Victorian online publishers, Victorian SBS radio translation and of course statewide outdoor portfolio.*

*It is worth noting that the TAC has also been very aware of the necessary but confronting nature of this advertisement. With this in mind, whilst a PG rating was provided, the TAC has made efforts to ensure it has not been shown in juvenile programming.*

*A copy of the media schedule and spot schedule is attached as reference. Please note, to ensure the potential emotional impact of our campaigns on those directly affected by road trauma is limited, the TAC makes available on request, a copy of the media spot buy, including outdoor locations, to members of the public who wish to modify their viewing and travel patterns, so as to minimise unnecessary emotional trauma.*

*Additionally, the Spokes website ([spokes.com.au](http://spokes.com.au)), a motorcycle road safety hub developed by the TAC specifically for riders has been used to deliver this road safety public education campaign, as well as provide additional statistical support for both the strategy and the development of the campaign.*

*Addressing the Motorcycling Communities Concern*

*Acknowledging the complaints received, it is clear the motorcycling community is a passionate group.*

*Whilst all attempts were made in the campaign development to recreate a true and factual road collision that involved speed as the major contributing factor, with the driver of the passenger vehicle not at fault, it would appear that this could be strengthened. Careful selection of both the motorcycle and passenger vehicle, the road location, signage and street environment were undertaken. However, on reviewing the passenger vehicle chosen for this campaign, the location of the indicators and the strength of amplification were insufficient to be clearly illustrated in the communication. It appears from the complaints received this may be the source of misinterpretation of the communication. The TAC can confirm that the indicators were on during the collision recreation (we have TV production rushes to support this). However, in order to address these concerns and strengthen the communication to avoid further confusion, we have since enhanced this aspect and are in the process of replacing this in all media channels. We have attached a copy of this re-edited execution for your reference and trust that you will agree that whilst the core communication remains unchanged, it does address some of the concerns raised in the complaints received.*

#### *In Conclusion*

*We acknowledge that some members of the public will find this campaign confronting and to some extent the TAC expected this response as we are asking many riders to change their behaviour. Our research and experience in this field tells us that this is the initial reaction to expect, but that over time through consistent public education and demonstration, behaviour change can occur and eventually becomes the new social norm. It is interesting that a number of complaints received regarding this communication are from members of the community living outside Victoria (5 out of 16). Given that the TAC is directly responsible for communicating road safety public education programs in Victoria only and that this is how the media strategy is applied, it is surprising the number of complaints received from outside our boundaries in such a short time period. Every effort to ensure credibility, factual representation and respect for the motorcycling community has been undertaken by the TAC in development of this campaign. We have no doubt it will have a positive effect on the behaviour of some motorcyclists – it will save lives. Given all of the above and the context in which this campaign is being used, we trust that you will view this response favourably and agree that whilst the campaign is most definitely confronting and executionally challenging, it does not breach Section 2 of the AANA Advertiser Code of Ethics.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement features a graphic depiction of a neck being broken and suggests that motorcyclists and not car drivers are responsible for road safety.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 of the Code states: “Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised”.



The Board noted that the advertisement features a reverse, slow motion depiction of a road accident between a motorbike and a car and that the motorcyclist is shown to break his neck and we hear a snapping sound.

The Board noted that the advertisement was given a 'PG' rating by CAD and that the advertiser has said that it has made efforts not to show the advertisement in juvenile programming and that a copy of the media spot buy is made available to the public.

The Board noted that the advertisement is targeted toward motorcyclists with a view to highlighting the dangers of speeding by as little as 8km/h.

The Board noted that the visual of a man's neck breaking is accompanied by a sound effect and considered that whilst this may be confronting and alarming to viewers, including children, the community message being delivered in the advertisement was extremely important and that the target audience for this advertisement would relate to the advertisement.

In the Board's view the advertisement presents violence in a manner that is justifiable in the context of the product being advertised.

The Board determined that the advertisement did not breach Section 2.3 of the Code.

The Board considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted the complainants' concerns regarding the message of the advertisement suggesting that the motorcyclist is to blame for the accident whilst the driver of the car is not mentioned, despite the vehicle being shown as pulling out in front of the motorbike.

The Board noted the advertiser's response that the car did use indicators to pull out and that as a response to the complainants' concerns the advertisement has been modified to enhance the use of indicators by the car in the advertisement.

The Board noted that the advertisement is targeted towards motorcyclists and considered that the message contained in the advertisement, whilst directed at motorcyclists, does not diminish the important road safety messages for all road users.

The Board noted the complainants' concerns that the advertisement makes no mention of how the car driver could modify their behaviour and considered that in this instance it was appropriate for the advertisement to target just their intended market and in the Board's view the message of the advertisement does not breach prevailing community standards on safe driving by all road users.

Based on the above, the Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.